

APPENDIX IV

Included here are materials developed for the Commission's study. They are:

1. Questionnaire and Data Collection Form sent to Public and New York City Voluntary agencies
2. Outline for Interviews with Family Court Judges
3. Issue Paper for Family Court Judges
4. Addendum to Survey Form (Item 1, above) sent to those Voluntary Agencies not visited
5. Outline for Interviews with Agency Administrators and Supervisors
6. Outline for Group Interviews With Agency Foster Care and Adoption Workers
7. Agenda for Meeting With Child Welfare Attorneys
8. Agenda for Meeting With Attorneys for Parents or Children

Also included is a listing of the New York City voluntary agencies which responded to the Commission's survey including those personally visited and those not personally interviewed.



THE TEMPORARY STATE COMMISSION
ON CHILD WELFARE

SENATOR JOSEPH R. PISANI
Chairman

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SURVEY OF LEGAL BARRIERS TO ADOPTION

Before the Temporary State Commission on Child Welfare can assess the present adoption laws, we must have facts -- on how they are being used, if they serve the purpose for which they are intended, and what problems they present. The attached questionnaire is designed to obtain the necessary data.

Your answers to the questions will provide information based on your first-hand experience. It will ensure that the recommendations made by the Commission will reflect the realities of the situation.

Thank you very much for taking the time and trouble to help us.

Please fill out:

_____, 1975

Person Completing Form

Title

Name of Agency

July 8, 1975

SURVEY OF LEGAL BARRIERS TO ADOPTION

- I. We are interested in learning more about the procedures to free and place children for adoption in New York State. We want specifically to learn about procedures/petitions initiated or filed in 1973 and also to get some information about the "fate" of these cases. Please help us by giving us the number of children who fall into each of the categories below.

	Permanent Surrender	Permanent Neglect	Abandonment	Any Other
Total number of petitions/ procedures <u>initiated</u> in 1973.				
↓				
Of those initiated, number of children <u>freed</u> by May 1, 1975.				
↓				
Of those freed, number of children <u>adopted</u> by May 1, 1975.				
↓				
How many of these adoptions were subsidized?				
↓				
How many of these subsidies were <u>general support</u> subsidies?				
↓				
How many of these subsidies were <u>medical</u> subsidies?				
Petitions that were dismissed or judgment suspended.	X			
Petitions withdrawn after <u>surrender</u> by parent(s).	X			

How many petitions were initiated in 1973 and were not filed? _____
Number

What prevented filing of these petitions? _____

II. THE FOLLOWING QUESTIONS ADDRESS THE 24-MONTH FOSTER CARE REVIEW HEARINGS. WE ARE INTERESTED ONLY IN CASES REVIEWED BY THE COURT IN 1973.

1. First tell us the number of each of the agency recommendations made (Short-term goal)

Agency Recommendations
(Short-term goal)

	Number
To explore freeing for adoption	_____
To place child for adoption	_____
To explore discharge of child to parent, guardian or relative	_____
To discharge child to parent, guardian or relative	_____
To continue foster care	_____
Other(Specify): _____	_____

2. Now for those cases reviewed by the court in 1973. Indicate number of each type of Court Order which resulted.

- a. Court Order to institute proceedings to free children.

Number of Orders

Of these, how many proceedings were instituted within 12 months following the Order?

Number Proceedings Instituted

In addition, how many proceedings were instituted after 12 months and before 5/75.

Number Additional Proceedings Instituted

Of these, how many voluntary surrenders were obtained within 12 months?

Number Voluntary Surrenders

In addition, how many voluntary surrenders were obtained after 12 months and before 5/75.

Number Additional Voluntary Surrenders

II. 24-MONTH FOSTER CARE REVIEW HEARINGS (Continued)

b. Court Order to place child for adoption.

Number of Orders → Of these how many were placed within
12 months?

Number Placed

→ In addition, how many were placed after
12 months and before 5/75?

Additional Number Placed

c. Court Order to return child to parent,
guardian or relative.

Number of Orders → Of these, how many were returned to
parent, guardian or relative within
12 months?

Number Returned

→ In addition, how many were returned after
12 months and before 5/75?

Additional Number Returned

d. Court Order to continue foster care.
(No further action)

Number of Orders → Of these how many were continued in
foster care for 12 months?

Number Continued

e. Court Order of Protection.

Number of Orders → Of these how many of these Orders
were carried out within 12 months?

Number Carried Out

→ In addition, how many were carried out
after 12 months and before 5/75?

Additional Number Carried Out

- f. What other Court Orders were specified?
(Describe and indicate number of cases)

Specify:

Number

→ How many of these Orders were carried out within 12 months?

Number Carried Out

→ In addition, how many were carried out after 12 months and before 5/75?

Additional Number Carried Out

Number

→ How many of these Orders were carried out within 12 months?

Number Carried Out

→ In addition, how many were carried out after 12 months and before 5/75?

Additional Number Carried Out

III. MORE ON 24-MONTH FOSTER CARE REVIEW HEARINGS AND TERMINATION OF PARENTAL RIGHTS HEARINGS

1a. Who is the agency's legal representative? (CHECK ONLY ONE IN EACH CATEGORY)

FOSTER CARE REVIEW

TERMINATION OF PARENTAL RIGHTS HEARINGS

☐ The agency's attorney

☐ The agency's attorney

☐ The corporation counsel

☐ The corporation counsel

☐ The county attorney

☐ The county attorney

☐ Other _____
Specify

☐ Other _____
Specify

☐ No legal representative

☐ No legal representative

1b. Does he/she specialize in child welfare legal services?

☐ Yes

☐ No

☐ Yes

☐ No

IV. SPECIALIZED PERSONNEL ON FREEING AND PLACING CHILDREN FOR ADOPTION

a) We are interested in knowing whether you have specialized personnel whose primary function is in the freeing or placing of children for adoption. (CHECK THE CATEGORY THAT BEST DESCRIBES YOUR AGENCY)

☐ A specified worker(s) whose primary function is the review of the total agency foster caseload to identify children who are eligible to be freed for adoption.

☐ A specified worker(s) assigned to conduct diligent searches and to prepare legal documentation (legal availability unit).

☐ Other workers whose primary responsibility is the freeing of children. Specify: _____

b) Do you have an autonomous adoption unit in your agency?

☐ Yes

☐ No

If "Yes", how many caseworkers are in the Unit?

Number of Caseworkers

How many supervisors?

Number of Supervisors

What services are performed by this Unit?
(Specify in space provided below)

IV. SPECIALIZED PERSONNEL (Continued)

- c) If you have no adoption Unit at present, please state why, i.e., agency deals primarily with adolescents _____

V. TRAINING SESSIONS ON ADOPTION

Were training sessions for foster care workers given in the past 12 months?

- ☐ Yes ☐ No

If "Yes", were the following topics covered? CHECK ALL TOPICS COVERED.

- ☐ Laws on Termination of Parental Rights.
☐ Provisions of the 24-month Foster Care Review Law.
☐ Legal Procedures for Freeing of Children.
☐ Planning Decisions on Freeing of Children.
☐ Guidelines for Obtaining Voluntary Surrenders.
☐ Adoption by Foster Parents.
☐ Adoption Subsidy.
☐ Interpretation of "moral and temporal interests of child".
☐ Other: _____

Specify

Were training sessions for adoption workers given in the past 12 months?

- ☐ Yes ☐ No

If "Yes", were the following topics covered? CHECK ALL TOPICS COVERED.

- ☐ Recruitment techniques: Use of Mass Media.
☐ Recruitment techniques: Use of adoption subsidy.
☐ Recruitment from minority groups.
☐ Recruitment of adoptive families for the physically or mentally handicapped child.
☐ Adoption in Today's Society.
☐ Other: _____

Specify

VI. Now, some final questions!

1. In the past 12 months, how many of your adoption cases have been filed in the:

Family Court? _____ Number _____ Surrogate Court? _____ Number _____

What are the reasons for the selection of the Family Court or the Surrogate Court for these cases?

2. At the present time, how many cases are you carrying of children who are legally freed but not yet placed in adoptive homes?

Number

3. At the present time, how many cases are legally freed and in adoptive homes, but not yet legally adopted?

Number

THANK YOU FOR YOUR HELP!



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BARRIERS TO THE FREEING OF CHILDREN FOR ADOPTION

1. Outline for Interviews with Family Court Judges
2. The Issues

The questions in the enclosed outline (Item A) were developed from interviews with a number of Family Court Judges, Surrogates and Attorneys -- all recognized authorities on New York State's adoption laws. Each was asked to assess New York State's legislation and its administrative policies and practices pertaining to the freeing of children for adoption. Twelve issues emerged as critical to discussion of the subject. They are presented in Item B.

Family Court Judges in seven social services districts in New York State have been invited to assist the Temporary State Commission on Child Welfare in developing recommendations to facilitate adoption, where it is appropriate. The Judges will meet to define the problems as they see them, whether in the statutes or in their implementation. They will recommend both legislative and administrative remedies.

Item A outlines a series of questions that concern the Commission. Item B highlights some of the diverse views expressed in the interviews with the aforementioned authorities in the adoption field. These views may be of interest to the Judges assisting the Commission.



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ITEM A

OUTLINE FOR INTERVIEWS
WITH FAMILY COURT JUDGES

1. What in your view are the major differences in the Abandonment Statute (Social Services Law S. 371 and S. 384) and Permanent Termination of Parental Custody by Reason of Permanent Neglect (Article 6, Family Court Act)? Must an intent not to care for the child be demonstrated or can it be inferred from a course of conduct in an abandonment proceeding? Are there safeguards afforded to parents in permanent neglect proceedings which are not, but should be, afforded to parents in abandonment proceedings?
2. Do you believe that the substantive provisions of the Permanent Neglect Statute (failure to maintain contact with the child substantially, continuously or repeatedly or failure to plan for the future of the child, financial and physical ability) should be defined further? If so, how?
3. Do you recommend any changes or additions in the substantive provisions of the Permanent Neglect Statute? For example, do you consider it appropriate to provide as grounds for termination of parental rights extreme abuse or neglect?
4. With respect to the "diligent efforts requirement," how do different agencies describe the services they provide to encourage and strengthen family relationships? Are there significant differences in the activities of different voluntary agencies and the Department of Social Services? In your experience, do agencies have the capacities to perform their mandated role? Who (the Court or the Department of Social Services) should monitor the decision of a caseworker or voluntary agency to deny visitation?

INTERVIEW WITH FAMILY COURT JUDGES

Page 2

5. Where a child remains in foster care for a given period of time (one year, eighteen months, two years, three years, four years) do you favor an amendemnt to the law in which such a situation would be deemed to establish a presumption of permanent neglect, a prima facie case of permanent neglect or a duty of the respondent to come forward with countering evidence?
6. Do you believe that the existence of an adoptive home should be the precondition for the freeing of a child? Should this precondition be stated in the statute or in rules and regulations? If you oppose this precondition, how would you describe the benefits to a child of being freed without being adopted?
7. Should there be a separate statutory period specified for a finding of abandonment or permanent neglect for children under the age of one (or another given age) to expedite the freeing of children most eligible for adoption?
8. When handling adoptions, do Family Court Judges apply the same standards to abandonment under the Domestic Relations Law (S.111) as are given in the Social Services Law (S. 384)? If not, what standards? What criteria are used for dispensing with parental consent on such other grounds in the Domestic Relations Law as insanity, mental retardation, cruelty, neglect, deprivation of civil rights?
9. Do you recommend any procedural changes in the 24-month review and in termination of parental rights proceedings? Any administrative changes?
10. Do you recommend any changes in the content or method of presentation of permanent neglect and abandonment cases by authorized agencies, their lawyers and caseworkers? Would you recommend that these cases be presented only by lawyers who deal exclusively with child welfare cases? Do caseworkers require special training in applying the provisions of these two statutes?

11. With respect to the Social Service Law, S. 392
(Foster Care Status, Periodic Family Court Review):

- a. What have been the major benefits and major problems related to the mandatory 24-month review in your county?
- b. Should the time period be shortened for the first review and, if so, specify the time period and reason for its selection.
- c. How should agency compliance with the Court's orders be monitored?
- d. How have you used the following provisions of the Social Services Law, S. 392, and how have agencies responded to your orders?

Subdivision 7(b): directing the child to be returned to the parent, guardian or relative;

Subdivision 7(c): directing the agency to institute proceedings to legally free the child for adoption and permitting the foster parent to institute the proceedings if the agency should fail to do so within 30 days;

Subdivision 9: directing the agency to undertake diligent efforts to encourage and strengthen the parental relationship.

- e. How do you deal with an agency's failure and/or refusal to follow your orders?

12. If the Legislature were to revise the laws on abandonment and permanent neglect so as to create one uniform law for terminating parental rights, would you favor exclusive Family Court jurisdiction? What would be the problems of giving the Surrogate Court concurrent jurisdiction?



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ITEM B

THE ISSUES

1. The distinction between Abandonment (Social Services Law, S. 371 and S. 384 and Permanent Neglect (Family Court Act, Article 6).

The concept of permanent neglect was added (1959) to the New York State Children's Court Act and Domestic Relations Court Act in order to avoid the problems created by the New York State's Court of Appeals ruling that "abandonment" requires the proof of a "settled purposed to forgo forever all parental rights," according to one of the draftsmen of the statute. This statute established a new legal category, "permanent neglect," as an additional procedure for terminating parental rights. As stated by Governor Rockefeller in approving the legislation: "Under existing law [Social Services Law, S. 371 and S. 384] a great many children are doomed to grow up in institutions or foster homes at public expense and are prevented from forming normal, lasting family relationships, because minimal contacts between a parent and child in an institution or foster home act as a bar against a judicial finding that the child has been abandoned. Such a finding is necessary in order to permit the adoption of the child without parental consent..."

The purpose of the Permanent Neglect Statute is very different from that of the Abandonment Statute, according to some of the interviewees, because it focuses not on the parent's intent but on the child's need. Every child has a right to a home and permanent family relationships. The Permanent Neglect Statute is intended to provide a means for attaining that right.

Some authorities, however, suggest that the distinction between the two statutes began to be blurred in 1969 when the New York State Legislature shortened the statutory period of abandonment from one year to six months. The shorter period had the same legislative purpose as the Permanent Neglect Statute, i.e. to facilitate the movement of children from foster care to adoptive homes.

All agreed that the procedural safeguards should be the same in both laws and equally as clear in one as in the other.

At issue now is whether the two statutes serve different purposes. If not, they should be consolidated.

2. Clarification of substantive provisions in the Permanent Neglect Statute

Those interviewed took directly opposing positions on the desirability of clarifying Family Court Act, S.611 and S. 614. Proponents of further clarification point out the absence of a consensus among Family Court Judges on the meaning of key provisions, as: that the parent or custodian, 1.) "substantially and continuously or repeatedly maintain contact with," and 2.) "or plan for the future of the child." No guidelines exist, they state, on these or on 3.) "the agency's diligent efforts to encourage and strengthen the parental relationships," nor do criteria exist for interpreting, 4.) "the moral and temporal interest of the child." The meaning of these terms must be specified in the law, they declare, in language understandable to all concerned: The Court, the Department of Social Services, the parents and the lawyers who represent the opposing parties.

Some of these proponents maintain that the law must set standards by which the Judge can measure the custodial abilities of the parents. Others call for a re-assessment of the provisions of "contact" and "or plan" as appropriate indices of capabilities of caring for children.

It is a minority point of view among the interviewees that further definition is ill-advised. The wide spectrum of life situations, they say, makes it impossible to apply the same standards to each one. In the view of one Judge, the law does provide a reasonable criterion, "a fair preponderance of the evidence:" using this measurement, in a fact-finding hearing, "each Judge must work through an approach where he really looks at the past as well as the present, and decides how meaningful these visits have been, whether they have caused so much unhappiness that the child has not been able to settle down anywhere, whether his real hope is with his parents, and what will happen to him if permanent neglect isn't established so that he can put roots in a different, permanent family." One Judge suggested that only useful redefinition might be to stipulate that the contact be "meaningful" rather than "substantial, continuous or repeated."

This minority reasons that the "planning" envisioned by the statute clearly includes actions that enable the return of the child to his home. Planning is defined as "actions showing that the parent has taken steps necessary for the return of the child."

3. Changes in substantive provisions

A majority of those interviewed recommended that Article 10 of the Family Court Act be amended to include extreme, repeated abuse or neglect as grounds for permanent termination of parental rights and that reference to this amendment be made in Article 6. This reference would state that, notwithstanding the present provisions of Article 6, whenever the Court finds conduct which involves serious, repeated neglect or serious repeated abuse by the parent, the Court may of its own motion direct that a proceeding permanently to terminate the parents' rights may be initiated.

A number of safeguards were suggested. Among them were: 1.) The Judge who orders the proceedings should not be the Judge who hears the case. 2.) Termination of parental rights should be possible only where it can be shown that the parent will never be able to care properly for the child. 3.) An appropriate statute

should define the degree of neglect or abuse which is the cause for termination.

One Judge dissented because his own experience had demonstrated that abusing parents sometimes are successfully rehabilitated.

Additional recommendations included: 1.) the elimination of the "physically able" provision of the permanent neglect statute; 2.) an amendment to provide one criterion - the best interest of the child in making an order of disposition in the permanent neglect proceedings; 3.) the addition of mental retardation to mental illness as grounds for termination in abandonment proceedings; 4.) the review of all provisions for termination in the Domestic Relations Law, S. 111 and their inclusion in one unified statute on termination.

Several interviewees opposed any amendments to the laws as futile on the grounds that the basic flaw is not in the law itself. According to one view, the major block is the belief commonly held both by the community and by many Judges that the rights of the natural parents take precedence over the best interests of the child. According to another view, the flaw lies in the failure of the Department of Social Services and other authorized agencies to fulfill their responsibilities, with the result that by the time the case comes before the Court, the statute is irrelevant as written.

4. The "diligent effort" requirement

On the whole, interviewees did not isolate the types of services successful in strengthening parents' capability to care for the child. They reported that agency policies on visitation differ greatly. Some agencies permit the parent to visit only once a month for a two-hour period in an impersonal group setting that is not conducive to a good parent-child contact. Often they wait for the parent to request help. By contrast, other agencies put forth tremendous effort to locate a missing parent, have workers with necessary diagnostic skills to recognize pathology and to provide treatment as well as the willingness to solve practical problems. Such agency efforts often make possible the return of the child to its parents.

The recommendations were: 1.) retaining the requirement to protect the rights of the natural parent and to spur the agency to fulfill the responsibilities for which it is being paid; 2.) retaining it one year only, during which time the agency would undertake a "crash program" to encourage parental care of the child; (after the year the agency would be free to initiate termination proceedings); 3.) eliminating it because it penalizes the child for the agency's shortcomings, does not permit the parent to take the initiative in proving interest in his child, places the agency in an untenable position, in conflict with the interest of either the child or the parent, and expects the agency to do jobs at which it is not adept; 4.) transferring it from the Family Court Act to The Social Services Law (Section on the duties and responsibilities of the Commissioner), thereby creating a statutory liability for agencies that do not fulfill their responsibilities.

5. The establishment of a "presumption" of permanent neglect

Only a minority recommended that the law be amended to provide that a situation in which a child remains in foster care for a given period of time be deemed to establish a presumption of permanent neglect, a prima facie case of permanent neglect or a duty of the respondent to come forward with countering evidence. The time period recommended ranged from one to four years.

One Judge stated that the presumption should apply only to situations in which the child had stayed in the same home for a given period of time. The majority opposed the presumption on grounds that: 1.) it is unnecessary as a competent agency should have evidence to justify termination; 2.) even though it is rebuttable, the judge will be wary of using it because of fears that the parents have not been properly served with notice and do not have the information needed to protect their rights.

6. An adoptive home as the precondition for the freeing of a child

Proceedings to free a child should not be initiated

when foster parents do not wish to adopt and when other adoptive parents cannot be found, maintains one group of interviewees. They argue that agencies and courts should not be required to spend time on lengthy termination proceedings if there is no likelihood of adoption, but should be permitted to concentrate on cases for whom adoptive homes can be found. By contrast, in the words of a leading opponent to this position: "Every child should be considered as adoptable as a matter of policy. Judges should be educated to understand that every child is adoptable unless profoundly retarded or unless it has such a series of physical problems that there is practically no hope of the child having any reasonable health or of a parent finding any possible way of loving and nurturing that child."

The majority of those interviewed are opposed to a precondition of an adoptive home for freeing a child because they believe it perpetuates a myth that large numbers of children cannot be adopted. Agencies should be encouraged to use their resources to develop a pool of adoptive homes for older children with special needs. Moreover, in the opinion of some judges, older children should be freed from the negative influences of their parents even with no adoptive home available so that they are able to develop healthy relationships with foster parents.

One judge recommended that the State Department of Social Services include a directive in Rules and Regulations to initiate termination proceedings in the absence of an adoptive home.

7. The provision of a separate statutory period for the very young

It was recommended by some interviewees that a method be found to facilitate the freeing of children who are under the age of one and are therefore the easiest to place. Those who oppose this recommendation argue that: 1.) it would hurt the children who need help the most; 2.) there is no need to clutter up the statutory structure with the age exceptions; 3.) it would be unconstitutional to have a separate provision that applies to children based on the likelihood of their adoptability.

8. The provisions for dispensing with parental consent for adoption in the Domestic Relations Law (S. 111) compared with termination of parental rights provisions in the Social Services Law (S.384).

The Family Court Judges interviewed expressed interest in learning how their colleagues handle proceedings for dispensing with parental consent in adoptions.

9. Procedural and/or administrative changes in 24-month and in termination proceedings.

Recommendations included: 1.) priority in calendaring should be given to petitions for termination of parental rights as is given to juvenile delinquency of PINS petitions when the child is in detention; 2.) the statute should specify the maximum length of time for adjournments; 3.) the agency's initial decision to terminate parental rights should be subject to court review; 4.) publication should cease to be required in the Law Journal (because natural parents are least likely to read this publication and the cost is exorbitant); 5.) authorization should be secured for the state to pay all publication costs in adoption cases; 6.) the restrictions on evidence based on the confidentiality either of a parent-physician relationship or of a parent-certified social worker relationship; 7.) assignment of independent counsel to the child in a S. 392 proceeding.

The recommendations on priority calendaring was opposed by some interviewees on the grounds that the existing number of proceedings that have strict time requirements are creating overwhelming difficulties, particularly in metropolitan areas. Priorities and time limits create difficulties in serving notices and in giving adequate time to each case.

Several questions were raised for further consideration: How should a judge make a decision on giving notice of the proposed adoption to those parents whose rights have been terminated under the Domestic Relations Law, Section 111? After a finding of permanent neglect in Article 6 of the Family Court Act, should a judge have discretion or should he be mandated to terminate parental rights?

10. Agency presentation in termination proceedings

Judges agree that materials are not properly prepared, assembled and presented for the consideration of the court. The casework record, the basis for the agency's evidence, often lacks the necessary objective facts. Furthermore, the caseworker whose orientation and training are not in an adversary capacity is uncertain and fearful before the Court. As a result, the agencies do not move with dispatch in initiating proceedings and caseworkers are not responsive to the Judge's questions. In addition, the lawyers who present child welfare cases are often inexperienced and have neither the interest nor the motivation to present the case effectively. It was reported in various parts of the state that lawyers come to court without adequate preparation and are unable to bring out the salient points of the case.

Recommendations include: 1.) the state should pay for specialized training of caseworkers and lawyers on adoption legislation; 2.) the caseworker should have access to legal help in preparing the case; 3.) private agencies should receive adequate reimbursement for legal fees so that they can have effective legal representation (with reimbursement rates determined on the basis of a cost-effective formula); 4.) the State Department of Social Services should make available regional counsels (outside New York City) with expertise in adoption legislation for county agencies.

11. The Social Services Law S. 392 (Foster Care Status, Periodic Family Court Review)

a. Benefits and problems related to the 24-month review

At the outset, as a result of the foster care review hearings, a substantial number of children had been released from foster care, according to several judges. These numbers are decreasing, they state. Everyone interviewed agrees that the greatest benefit of the law is that it reminds agencies of their responsibility to keep current on the status and planning for the children in foster care.

Despite the widespread agreement on the value of court review, some reservations were expressed. For one, the court is seriously hampered in assessing the child's situation and the agency's recommendations because the Judges have only the evidence provided by the agencies. Some Judges believe that they have little recourse but to agree with agency recommendations. For another, the volume of cases has overwhelmed the calendar in some counties. Nonetheless, most Judges believe that S. 392 must be retained in order to keep abreast with changes in the child's situation.

A problem lies in serving a parent with a summons for the review if he is out of the city and in the consequences of his absence from the hearing. Under these circumstances, can the court order the agency to begin proceedings for freeing a child, it has been asked.

It was recommended that in order for the court to have independent evidence, 1.) a social worker be assigned to the court with responsibility only for reviewing the agency's evidence and for assembling other data; or 2.) a law guardian be assigned to the child with responsibility to gather all evidence in his behalf.

b. Scheduling of reviews

It was suggested that the first review period be shortened either to 18 months or to one year. Some favor 18 months on the basis that it would conform to the extension of placement hearings for the child placed by the court as neglected or delinquent. A Judge pointed out that this shorter time period, while desirable would present special problems in New York City (inability of agencies to follow-up on court orders on freeing for adoption because of the monitoring role of the City Department of Social Services.)

Those who advocate one year reviews suggest that the time periods of extension of placements also be shortened. The consensus was that subsequent hearings be two years apart; many felt that one year was desirable but impractical.

One Judge recommended that a new statute - permanent foster care - be instituted for children who could neither be freed nor returned home. Establishment of this status would eliminate time-consuming re-hearings whose repetition may be demeaning to the foster parent and does not help the child.

c. Agency compliance with court orders

Some judges held that the Family Court should have contempt authority to cite agencies for failure to comply with review orders. Otherwise a mockery can be made of the judge's orders, they assert. Others believe that the contempt citation is limited in its usefulness and that other methods should be found to deal with uncooperative agencies. Where there are a number of voluntary agencies, the judges should be given the power to transfer the child to another agency.

Others suggested that the court require reports and schedule a hearing on these reports, so that both the court and the agency are required to review the findings. Some judges automatically reschedule hearings to ensure follow-up.

The agencies' point of view was presented by some lawyers who report that the agencies do not comply because the orders are not clear and time limits have not been set.

d. Use of S. 392 Subd.7 (b), Subd.7 (c) and Subd.9

(The interviewees made no comments on these points.)

12. The jurisdictional issue

Family Court Judges interviewed did not address this issue. One Surrogate believes that Surrogates and Family Court Judges should have concurrent jurisdiction over permanent neglect as well as abandonment with the provision that if the Surrogate finds that the Court's social service resources are not adequate, he has the authority, on his own, to transfer the case to the Family Court. The second Surrogate believes that Surrogates do not have the necessary background and experience to deal with permanent neglect.

ADDENDUM TO THE SURVEY

LEGAL BARRIERS TO ADOPTION

(ADDENDUM SENT ONLY TO THOSE VOLUNTARY AGENCIES NOT VISITED)

1. Does your agency have a policy statement on Standards of Practice for Adoption Services? Does your agency have any other written statements on your policy on the freeing and placement of children for adoption? Please enclose all written material.
2. Do any provisions of the laws to terminate parental rights (Article 6 of the Family Court Act - Permanent Neglect; Section 384 of the Social Services Law - Abandonment; Section 111 of the Domestic Relations Law - Dispensing with Parental Consent) impede your agency's efforts to free children? If so, which? Does your agency rely on one or more of these legal procedures to the exclusion of others? If so, why? What changes would you recommend in these laws?
3. Are there any financial, personnel or organizational obstacles to adoptive planning? Please describe these obstacles and your recommendations for overcoming them.
4. What services does your agency provide in carrying out the "diligent efforts" requirement to strengthen the parental relationship (Sections 611 and 614 of the Family Court Act)?

- ☐ Family counseling on a regular basis _____
How frequently?
- ☐ Visits to the mother's home to discuss her problem _____
How often?
- ☐ Arrangements for specialized treatment _____
How do you follow-up?
- ☐ Facilitation of parental visits to the child:
- a) Are visits arranged: weekly ☐, or monthly ☐ ?
- b) Approximately how much money was allocated for parents' transportation last year?
- \$ _____
Amount
- ☐ Help in obtaining public assistance.
- ☐ Help in setting up a suitable home.

- ☐ Child care education.
- ☐ Employment counseling.
- ☐ Homemakers services.
- ☐ Day care services.

Which of the above services have you found the most useful in reuniting families? What obstacles, if any, prevent you from providing such services?

* * *

Please use this space to answer the above questions. Please let us know any additional views you have on 1) the major obstacles to adoption; and 2) administrative and legislative remedies.



SENATOR JOSEPH R. PISANI
Chairman

THE TEMPORARY STATE COMMISSION ON CHILD WELFARE

ROOM 203
STATE OFFICE BUILDING
270 BROADWAY
NEW YORK, N.Y. 10007
212-488-4843

ITEM I LEGAL BARRIERS TO ADOPTION

Outline for Interviews with Agency Administrators and Supervisors

1. Does your agency have a policy statement on standards of Practice for Adoption Services? Does your agency have any other written statements on your policy on the freeing and placement of children for adoption?
2. In your agency, are there organizational obstacles to the freeing and placement of children? What are they? Should the freeing of children be the responsibility of the foster care unit, the adoption unit or of a separate specialized unit? Do you have any procedures for coordinating the foster care, adoption and legal units?
3. Are there personnel obstacles to adoptive planning? Ideally, what academic and/or other qualifications would you prescribe for workers in the foster care unit? Workers in the adoption unit?
4. From the point of view of your agency, are there financial obstacles to adoptive planning? What changes would you recommend in reimbursement formulae and in adoption subsidies? Is your agency reimbursed for the location of adoptive homes?
5. What services does your agency provide in carrying out the "diligent efforts" requirement to strengthen the parental relationship (Sections 611 and 614 of the Family Court Act)? For example:
 - [] Family counseling on a regular basis _____
How frequently?
 - [] Visits to the mother's home to discuss her problem _____
How often?

(Question 5 continued on page 2).

☐ Arrangements for specialized treatment _____
How do you follow-up?

☐ Facilitation of parental visits to the child:

a) Are visits arranged: weekly ☐, or monthly ☐ ?

b) Where do the majority of visits take place
i.e. ☐ at agency office, ☐ at the foster home,
☐ at parent home, ☐ Other: _____
Specify _____

c) What arrangements are made to ensure that these visits are as meaningful as possible i.e. help to the parent in relating to the child; suggestions for activities such as visits to the park; counseling to parents on concrete problems that arise:

d) Approximately how much money was allocated for transportation for parental visits last year? \$ _____
Were additional monies given in this period to parents for activities related to these visits?
If so, how much? \$ _____

e) Describe your agency's policies and practices governing a child's visit to his parent(s).

☐ Help in obtaining public assistance.

☐ Help in setting up a suitable home.

☐ Child care education.

☐ Employment counseling.

☐ Homemakers services.

☐ Day care services.

6. How do you assess the advantages and disadvantages of the "24-month foster care review" hearing? Does your agency have a procedure for monitoring the Court's orders? Is this procedure satisfactory? How does your agency respond to court orders that you believe are not in the best interests of the child?

7. Do any provisions of the laws to terminate parental rights (Article 6 of the Family Court Act - Permanent Neglect; Section 384 of the Social Services Law - Abandonment; Section 111 of the Domestic Relations Law - Dispensing with Parental Consent) impede your agency's efforts to free children? If so, which? Does your agency rely on one or more of these legal procedures to the exclusion of others? If so, why? What changes would you recommend in these laws?
8. Regarding adoption by foster parents: How has recent legislation on adoption by foster parents affected the relationship of foster parents to your agency? Should there be a change in criteria for selection of foster parents as well as of adoptive parents? What changes? What are your agency's written statements on adoption by foster parents?
9. How would you like to see "permanent" (long-term) foster care defined? How would you select the children for "permanent" foster care?
10. How can the State Department of Social Services and the State Board of Social Welfare assist you in your efforts to free and place children? What changes would you like to see in the Department of Social Services' rules and regulations? What resources from the Department of Social Services would be helpful to you?
11. Does your agency and its legal representative(s) meet periodically with Family Court Judges to discuss State Department of Social Services' Administrative and Informational Letters on the freeing and placement of children for adoption? Are the Family Court Judges and your agency equally informed about adoption procedures including adoption subsidy?
12. Do you believe there should be joint guidelines promulgated by the Office of Court Administration and by the State Department of Social Services on the freeing and placement of children in public care for adoption?

July 10, 1975



SENATOR JOSEPH R. PISANI
Chairman

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ITEM II

LEGAL BARRIERS TO ADOPTION

Outline for Group Interviews with Agency Foster Care and Adoption Workers

1. Regarding adoption by foster parents: Periodically, do you assess your case load of foster parents to find likely adoptive parents? Should foster parents be permitted to take on foster children after they have become adoptive parents? Should foster parents have professional status?
2. Regarding recruitment of adoptive parents: Do you believe you can recruit a pool of adoptive parents for children, once they become freed? What is your experience in the use of the Statewide Exchange? What about the picture book? Do you believe several methods can be combined, i.e., the picture book with Statewide Exchange? What experience have you had with ARENA?
3. Regarding adoption subsidy: How do you feel about the use of subsidy? How extensively is adoption subsidy used? In your opinion, is it used as fully as it should be? If not, what suggestions would you make for greater use?
4. What is your perception of your agency's policy on the termination of parental rights? Do you believe it is an affirmative one?
5. What type of legal assistance do you have in deciding whether the following legal procedures should be used in the freeing of a particular child?
 - a. Voluntary Surrender (SSL 384 Sub. 1)
 - b. Abandonment (SSL 384)
 - c. Permanent Neglect (Family Court Act, Article 6)
 - d. Mental Illness of Parent (SSL 384 Sub.7)

(Question 5 continued on page 2).

- e. Consent not required for adoption by "a parent who has abandoned the child or who has surrendered the child...for whose child a grardian has been appointed under the provisions of section three hundred eighty-four of the Social Services Law or who has been deprived of civil rights or who is insane or who has been judicially declared incompetent or who is mentally retarded as defined by the mental hygiene law..." (Domestic Relations Law S.111)
6. What amount of time do you estimate that it takes you to prepare a case for each of the above procedures?
7. What type of help do you believe you need from your agency attorney in preparing a termination of parental rights case? For example:
- a) Has he/she outlined for you the type of evidence that you must provide?
 - b) Has he/she advised you what is expected of you in court, your rights as a witness, and what the judge has a right to do?
 - c) Generally, how many times do you see your attorney before you go to court on one of these proceedings?
 - d) Generally, how long are sessions with the attorney?
8. What services does your agency provide in carrying out the "diligent efforts" requirement to strengthen the parental relationship (Sections 611 and 614 of the Family Court Act)? For example:
- ☐ Family counseling on a regular basis _____
How frequently?
 - ☐ Visits to the mother's home to discuss her problem _____
How often?
 - ☐ Arrangements for specialized treatment _____
How do you follow-up?
 - ☐ Facilitation of parental visits to the child:
 - a) Are visits arranged: weekly ☐, or monthly ☐ ?
 - b) Where do the majority of visits take place
i.e. ☐ at agency office, ☐ at the foster home,
☐ at parent home, ☐ Other: _____
Specify
-

- c) What arrangements are made to ensure that these visits are as meaningful as possible i.e. help to the parent in relating to the child; suggestions for activities such as visits to the park; counseling to parents on concrete problems that arise:
- _____
- _____
- _____

- d) Approximately how much money was allocated for transportation for parental visits last year? \$ _____
 Were additional monies given in this period to parents for activities related to these visits?
 If so, how much? \$ _____

- e) Describe your agency's policies and practices governing a child's visit to his parent(s).
- _____
- _____
- _____

- ☐ Help in obtaining public assistance.
- ☐ Help in setting up a suitable home.
- ☐ Child care education.
- ☐ Employment counseling.
- ☐ Homemakers services.
- ☐ Day care services.

9. Do you believe that the permanent neglect statute requirements and sound casework practice are in conflict. If so, how?

10. What changes would you like to see in the laws terminating parental rights? For example:

- a) Do you believe that parents' rights should be terminated when there is evidence of extreme abuse or continuing neglect? If so, what criteria would you establish for the degree of abuse and for the length of neglect?
- b) Do you believe that a child should be freed after he has been in foster care for a certain period of time? If so, what period?
- c) Should an adoptive home be a precondition for the freeing of a child? What reservations do you have about freeing a child without an adoptive home?
- d) Others?

11. Regarding the foster-care 24-month review hearings and termination proceedings:
- a) What have been the major benefits and major problems of the 24-month review?
 - b) In either the 24-month review and/or termination proceedings, have you ever received orders from the judge that you believe are not in the best interests of the child and what have you done as a result? Do you believe that your agency has the staff resources, i.e., attorneys, psychiatrists, needed to carry out court orders?
 - c) Do you find that the judge's orders are clearly stated?
 - d) How does your agency monitor the 24-month review hearings? Should your agency have a special unit with responsibility for monitoring the court's orders and for assisting you in preparing a termination of parental rights case?
12. Have you found that more of your termination cases are being challenged now than before? Roughly, in what proportion of your cases has the judge ruled against your recommendation? Why do you believe you lost the case? If you disagreed with the judge's decision, did your agency take an appeal? If not, why not? Have adverse court rulings in or out of your court discouraged you from bringing a case to court? Specify these court rulings.
13. Have recent changes in the laws: 1) terminating parental rights (permanent neglect and abandonment), 2) in the adoption laws, 3) in adoption subsidy helped or hindered your efforts to free children for adoption?

July 10, 1975

AGENDA

LEGAL BARRIERS TO ADOPTION

Meeting of Child Welfare Attorneys - October 7, 1975

1. To what extent does the retention of two separate legal procedures -- abandonment -- (Social Services Law, Sec. 371 and 384) - and -- permanent neglect -- (Family Court Act, Article 6) - facilitate or hinder the freeing of children for adoption? Please comment on both the substantive provisions and the procedural standards of these laws.
2. What changes would you recommend in the substantive provisions and the procedural standards of both laws to facilitate the freeing of children for adoption?
3. To what extent has the law terminating parental rights on the grounds of mental illness and mental retardation (Social Services Law, Sec. 384, Subd. 7) proven helpful or difficult in the freeing of children for adoption? What specific problems have you encountered and what remedies would you suggest?
4. To what extent has the foster care review law (Social Services Law Sec. 392) been helpful, a hindrance or of no impact in the freeing of children for adoption?
5. What are the principal problems which you have experienced with respect to the rights of the adjudicated out-of-wedlock father and what solutions would you propose?
6. What are the principal problems you have experienced and what solutions would you propose with respect to the rights of the putative father?
7. How do policies and practices of agencies that you represent effect the freeing of children for adoption e.g. agency visitation policies, record keeping practices, use of your services by the staff or other practices you may wish to cite. To what extent should attorneys participate in the establishment of policies on the termination of parental rights? In the training of workers?
8. What experiences have you had (particularly in recent months) with the statements given by judges as their reasons for their dispositions in foster care review hearings?
9. Are there any changes needed in court procedures to expedite the freeing of children for adoption? What changes would you suggest?
10. What other matters aid and/or hinder you in the freeing of children for adoption?

AGENDA

LEGAL BARRIERS TO ADOPTION PROJECT

Meeting of Attorneys for Parents or Children in Termination Proceedings

1. Social Services Law, Section 384 transfers guardianship and custody of the child to an authorized agency. Family Court Act, Article 6 terminates parental custody permanently and awards custody of the child to an authorized agency. The recommendation has been made that the two laws be consolidated into one statute, eliminating the distinction between "abandonment" and "permanent neglect". Would you be for or against the elimination of this distinction? State your reasons.
2. Do the "abandonment" and "permanent neglect" statutes protect the rights of all parties. If not, what changes would you recommend in their substantive provisions and/or procedural standards?
3. Should there be any changes in the laws governing the placement of children in care.
4. What problems have you had with the laws terminating parental rights on the grounds of mental illness (Social Services Law Sec. 384 Subd. 7).
5. In your experience, to what extent has the foster care review (Social Services Law, Sec. 392) resulted in the return of the child to the parent? What changes would you like to see in the Foster Care Review statute or rules and regulations?
6. In instances that you represent the parent, to what extent do you believe it is appropriate to take into account the best interests of the child? Do you believe that there is a conflict between the parent's rights and the child's interests?
7. Are changes needed in court procedures to protect the interest of your clients in termination proceedings? If so, what changes?
8. Many believe that the present state policy makes permanence the disposition of choice. Do you think this is a desirable policy? State your reasons.

NEW YORK CITY CHILD CARE AGENCIES
RESPONDING TO THE COMMISSION'S SURVEY

Agencies Visited

Angel Guardian Home
Brookwood Child Care
Cardinal McCloskey School and Home
Catholic Home Bureau
Children's Aid Society
Edwin Gould Services for Children
Greer Children's Services
Jewish Child Care Association
Little Flower Children's Services
Louise Wise Services
New York Foundling Hospital
St. Dominic's Home
Salvation Army Foster Home and Adoption Services
Spence-Chapin Services to Families and Children
Talbot Perkins Children's Services
Windham Child Care

Agencies Not Visited But Which Responded To The Survey

Abbott House
Astor Home for Children
Brooklyn Bureau of Community Service
Brooklyn Home for Children
Brooklyn Catholic Guardian Society
Cardinal Hayes Home for Children
Children's Village
Graham Home for Children
Inwood House
Lakeside School
Leake & Watts Children's Home
Lt. Joseph P. Kennedy, Jr. Home
Lutheran Community Services, Inc.
McMahon Memorial Shelter
Mission of the Immaculate Virgin
New York Catholic Guardian Society
Ottillie Home for Children
St. Agatha Home for Children
St. Cabrini Home, Inc.
St. Christopher's School
St. John's Residence for Boys
St. Joseph's Home of Peekskill
St. Mary of the Angels Home
St. Michael's Home
Sheltering Arms Children's Services
Speedwell Services for Children, Inc.

Agencies Which Responded That The Survey Was Not Applicable To Them

Argus Youth, Inc.
Berkshire Farm Center and Services for Youth
Big Brothers, Inc.
Divine Providence Shelter
Friendly Homes, Inc.
Green Chimneys Children's Services
Hebrew Children's Home
Jennie Clarkson Home for Children
Jewish Board of Guardians
Kennedy Child Study Center
Lexington School for the Deaf
Lincoln Hall
Madonna Heights School for Girls
Martin De Porres Group Home, Inc.
Mercy Home for Children
Ohel Children's Home
Pius XII School
Riverdale Children's Association
Rosalie Hall of Misericordia Hospital
Salvation Army Wayside Home School for Girls
St. Barnabas House
St. Germaine's Home
St. Mary's in-the-Field
St. Peter's School
Sisters of the Good Shepherd Residences
Villa Loretto School